

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, et al.,

Plaintiffs,

v.

ROBERT A. RUCHO, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting, et al.,

Defendants.

No. 1:16-CV-1026

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, et al.,

Plaintiffs,

v.

ROBERT A. RUCHO, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting, et al.,

Defendants.

No. 1:16-CV-1164

ORDER

PER CURIAM:

In a memorandum opinion and order entered August 27, 2018 (the “Order”), this Court held that North Carolina’s 2016 Congressional Redistricting Plan (the “2016 Plan”) constitutes an unconstitutional partisan gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment, the First Amendment, and Article I of the Constitution. *Common Cause v. Rucho*, No. 1:16-CV-1026, 1:16-CV-1164, 2018 WL 4087220 (M.D.N.C. Aug. 27, 2018). In that opinion and order, this Court enjoined the State from using the 2016 Plan in any election *after* the November 6, 2018, general election. *Id.* at *108. We further directed the parties to submit briefing no later than August 31, 2018, addressing (1) whether this Court should allow the State to use the 2016 Plan in the November 6, 2018, general election and (2) whether this Court should allow the General Assembly a third opportunity to draw a constitutionally compliant congressional districting plan. *Id.* at *108-09.

Having carefully reviewed the parties’ briefing and supporting materials, we conclude that there is insufficient time for this Court to approve a new districting plan and for the State to conduct an election using that plan prior to the seating of the new Congress in January 2019. And we further find that imposing a new schedule for North Carolina’s congressional elections would, at this late juncture, unduly interfere with the State’s electoral machinery and likely confuse voters and depress turnout. Accordingly, we decline to enjoin use of the 2016 Plan in the November 6, 2018, general election.

On August 31, 2018, Legislative Defendants¹ noticed an appeal of our August 27, 2018 opinion and order to the Supreme Court, Notice of Appeal, Aug. 27, 2018, ECF No. 145, and moved this Court to stay that order pending review by the Court, Leg. Defs.’ Emer. Mot. to Stay Pending Sup. Ct. Rev. & Request for Expedited Ruling, Aug. 27, 2018, ECF No. 146. No later than 5 p.m. on September 5, 2018, Plaintiffs and State Defendants shall file a response to Leg. Defs.’ stay motion. In particular, Plaintiffs should focus on whether Legislative Defendants will suffer irreparable harm from our order to not allow the use of the unconstitutional 2016 Plan beyond the November 6, 2018, general election. This Court will expeditiously rule on Legislative Defendants’ stay motion thereafter.

¹ Legislative Defendants in both actions are Robert A. Rucho, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co-Chairman of the 2016 Joint Select Committee on Congressional Redistricting; David R. Lewis, in his official capacity as Chairman of the North Carolina House of Representatives Redistricting Committee for the 2016 Extra Session and Co-Chairman of the 2016 Joint Select Committee on Congressional Redistricting; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate. Plaintiffs also name as defendants A. Grant Whitney, Jr., in his official capacity as Chairman and acting on behalf of the North Carolina State Board of Elections (“Whitney”); the North Carolina State Board of Elections (collectively, with Whitney, the “State Board Defendants”); and the State of North Carolina (collectively, with the State Board Defendants, “State Defendants”).

SO ORDERED.

Date: September 4, 2018

/s/ James A. Wynn, Jr.
Hon. James A. Wynn, Jr.
United States Circuit Judge

/s/ William L. Osteen, Jr.
Hon. William L. Osteen, Jr.
United States District Judge

/s/ W. Earl Britt
Hon. W. Earl Britt
Senior United States District Judge